

PUBLIC PROSECUTOR

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v.

EDMUND JAMMY NGALI & ANOR.

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
TUAN IAN H.C. CHIN J
[CRIMINAL TRIAL NO. K.46-08-1994]
13 SEPTEMBER 1995

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CRIMINAL LAW: *Murder - Ingredients - Whether act done with intention of causing death or bodily injury likely to cause death - Whether bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death - Whether acts in furtherance of common intention of two accused - Sections 34 & 302 of the Penal Code.*

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Both the accused were charged for the murder of Liew Kim Loi @ Meehon ("the deceased") allegedly at midnight on 21 February 1994 in furtherance of a common intention between them both. Evidence showed that the two accused and the deceased had been in a card game in a canteen in Kg. Linsuk. The 1st accused had become the bankers and lost money but did not pay his losses. This led to a verbal quarrel between the deceased and the 1st accused. The deceased left on his motorcycle but the 1st and 2nd accused waited for him at a road junction and an argument ensued. Later, when the accused was riding away on his motorcycle, the 1st accused drove a pick-up van fast behind the deceased and rammed the motorcycle with the pick-up. The deceased fell off the motorcycle and the motorcycle fell on its near-side. The deceased tried to raise the motorcycle but the 1st accused pushed the motorcycle away with the pick-up. The 2nd accused got out of the pick-up, went to the deceased and beat the deceased while the deceased pleaded for forgiveness. The 1st accused then drove the pick-up forward and hit the deceased, running the pick-up over his body with the front tyre. The pick-up was reversed and was again driven by the 1st accused towards the deceased but the deceased avoided the pick-up and rolled into the ravine. The 2nd accused pushed the deceased's motorcycle down the into the ravine after the 1st accused told him to do so. The two accused then went down the ravine where the deceased had fallen and a witness heard the 1st accused saying "pegang, pegang" and the deceased saying "tolong".

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The next day, the 1st accused welded the bumper of the pick-up at the workshop where he worked. The doctor who conducted the post-mortem testified that the cause of death was due to the fracture of the cervical spine and that death was instantaneous. The doctor who said that the pick-up could cause a fracture of the cervical spine also said that it could be caused by the deceased falling and hitting his head first on the ground.

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- a* The main issues for determination were (i) whether the death of the deceased was the result of the act of any of the accused and (ii) whether the 1st accused's actions were in pursuance of a pre-arranged plan of the two accused.

Held:

- b* [1] Since the deceased was able to avoid the pick-up by rolling away when the pick-up made a second run at him, the pick-up could not have caused the cervical fracture because the deceased would not have been able to roll.
- c* [2] It was also possible for the deceased's head-long dive into the ravine to have caused the cervical spine fracture as the witness who testified about the cry for help did not give such testimony at the preliminary inquiry.
- d* [3] Since the evidence shows that the deceased was still alive after the pick-up had run over him, the prosecution had failed to establish that the death of the deceased was the result of any act of either of the accused. It was the prosecution's case that the fracture was caused by the pick-up running over the deceased and therefore the two accused cannot be held responsible for the death of the deceased as a result of the head-long dive.
- e* [4] The evidence established that the 1st accused by driving the pick-up in such manner as to ram the motorcycle and run it over the body of the deceased, had the intention to cause the death of the deceased or knew that the death of the deceased would result. His drinking binge did not prevent his presence of mind when handling the vehicle. His attempt to quickly repair the damage to the pick-up lent weight of criminal intent.
- f* There is a *prima facie* case of attempted murder under s. 307 of the Penal Code which the accused has to answer.
- g* [5] The 2nd accused is the elder brother of the 1st accused. There is no evidence that he had discussed with the 1st accused or had any conversation with the 1st accused about going to the junction to wait for the deceased. The evidence showed that no common intention was established.

- h* [Both accused discharged and acquitted of murder charge under s. 302. 1st accused called upon to defend charge of attempted murder under s. 307].

Legislation referred to:

Penal Code, ss. 34, 302, 307

- i* **Other source referred to:**

Ratanlal & Dhirajlal's Law of Crimes, 23rd Edn., pp. 1041-1042

For the prosecution - Zahir Hussein Ahmad Shah, DPP **a**
For the 1st accused - Ansari Abdullah
For the 2nd accused - Patricia Hiew

JUDGMENT

Ian H.C. Chin J: **b**

Whether a Case to Answer

A. The Charge

Edmund Jammy Ngali (“the 1st accused”) and Herman J. Ngali (2nd accused) are charged as follows: **c**

That you both on or about 21 February 1994 at around midnight at Kilometre 27, Tenghilan Road, Tamparuli, Tuaran, in the District of Kota Kinabalu, in the State of Sabah, in furtherance of a common intention between you both, did commit murder by causing the death of one Liew Kim Loi @ Meehon I/C H 0799105 and thereby committed an offence under s. 302 of the Penal Code and read together with s. 34 of the same Act. **d**

B. The Ingredients of Offence

To succeed, the prosecution must prove beyond any reasonable doubt the following ingredients, viz.: **e**

- (1) that the death of Liew Kim Loi @ Meehon had taken place;
 - (2) that the said death had been caused by, or in consequence of, the act of the two accused or anyone of them pursuant to a pre-arranged plan; **f**
 - (3) (1) the act by which the death is caused is done with the intention of causing death; (2) the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused; or (3) the act is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or (4) the two accused or any one of them pursuant to a pre-arranged plan know or knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid. **g**
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a C. The Evidence

Introduction

b On 21 February 1994, Walfred Ireneus Jebin (“Walfred”) for the better part of the afternoon of that day was in a yellow Datsun pick-up bearing registration number ST2364B (“the pick-up”) driven by his childhood friend, the 1st accused. The two of them had been carrying goods and ferrying people around from one village to another. It was in the village called Kampong Malinsau that they had some local brew called Tapai. According to Walfred, he and the 1st accused felt giddy afterwards. Notwithstanding that, they both
c proceeded to a village called Kampong Linsuk with the 1st accused driving the pick-up. They went to a canteen (“the canteen”) in Kg. Linsuk where a number of people had already gathered there and a card game, accompanied by drinking was already in session. It was already evening.

The Events of the Canteen

d Evidence was given that in the late afternoon of that day, that is 21 February 1994, Liew Kim Loi @ Meehon (“the deceased”) and four others were already in the canteen drinking and playing cards. The deceased went to the canteen in a Yamaha RXZ motorcycle bearing registration number SA4203L (“the motorcycle”). They were later joined by Walfred and the two accused. Walfred
e and the 1st accused came in the pick-up driven by the 1st accused after, as was mentioned earlier, they had drinks in Kg. Malinsau. The 1st accused then joined the card game, became the banker and lost money but he did not pay his losses. This resulted in the deceased saying to the 1st accused words to the effect that the 1st accused should not have become the banker if he had
f no money. Petrus bin Maidol testified that the deceased and the 1st accused did not quarrel but that he did with the 1st accused and this is confirmed by Wileh Kulas. Wileh Kulas also said the deceased demanded and was paid RM3 by the 2nd accused whereas Walfred said there was no such thing and that it was from the 1st accused that the deceased demanded payment of RM3
g and that the 1st accused paid the sum while being angry but it appears that Walfred later on contradicted himself when he said the deceased returned the money to the 2nd accused and thus implied that it was the 2nd accused that the deceased demanded money from which version is more likely in view of the evidence of the other witnesses. Walfred testified that the deceased and
h the 1st accused did quarrel which Walfred described as being the deceased saying to the 1st accused the Malay words: “Kalau tiada duit, jangan jadi chong” (translated to mean “if you do not have the money, do not become the banker”) to which, the 1st accused did not say anything in reply. This contrasted with Wileh’s evidence who said the words said were: “Lain kali tiada duit, jangan chong.” The card game ended there. I am inclined to believe
i the variance in the evidence was due to faulty recollection of minute details but the gist of which was correctly stated since the two versions conveyed the same meaning.

The Episode Involving the Pickup and the Motorcycle

These people thereafter dispersed. The 1st accused drove the pick-up away taking with him the 2nd accused, who was seated in the cabin beside the 1st accused, and Walfred, who was seated on one of the benches at the back of the pick-up. The deceased had earlier left in the motorcycle. The rest of the evidence of the events came mainly from Walfred though Irma Suriyant binti Ismail (“Irma”), a school teacher, also provided some confirmation, and it is as follows.

The pick-up was driven to the road junction of Kg. Bunga where they waited until the deceased came in the motorcycle. Irma was staying in a room just opposite the place where pick-up came to stop and she testified she saw the pick-up and that she heard the ensuing argument about RM3 between the three persons, two from the pick-up and one from a motorcycle. The two accused got out of the pick-up and approached the deceased. According to Walfred, it was, after correcting himself, the 2nd accused who brought along a rotan when the two accused approached the deceased. This contrasted with Irma’s evidence that it was the person who got down from the driver’s seat that carried the rotan. But it is only a minor and insignificant discrepancy because the rotan plays no part in this case. The 2nd accused then demanded the return of RM3 which the deceased obliged but the deceased, before he left in the motorcycle, scolded and said “Besok kita jumpa di kedai”. The 1st accused then said, “Saya bubut kau ini”. The two accused then went back to the pick-up and the 1st accused then drove after the deceased while Walfred was still seated at the back of the pick-up. The pick-up was driven fast and it caught up with the deceased. The 1st accused honked the deceased, who was then riding the motorcycle in the middle of the road, and the deceased replied. The 1st accused then rammed the motorcycle with the pick-up. The deceased fell off the motorcycle and the motorcycle, after Walfred’s evidence was again corrected, fell on the motorcycle’s near-side which corrected version I accept since it is supported by the evidence of the expert. The deceased then went and tried to raise the motorcycle but the 1st accused pushed the motorcycle away with the pick-up. The pick-up then stopped, the 2nd accused got out, went to the deceased and beat the deceased while the deceased pleaded for forgiveness. The pick-up was again used to push the motorcycle further forward. After doing that, the 1st accused made a U-turn and headed straight for the deceased and while doing that, the 1st accused shouted to the 2nd accused to get away. Walfred had then jumped down from the pick-up. The 1st accused drove the pick-up towards and hit the deceased, running the pick-up over his body with the front tyre but Walfred is not sure how many tyres ran over the deceased. The pick-up was reversed and again driven by the 1st accused towards the deceased but this time, the deceased avoided the pick-up and rolled into the ravine. The pick-up got stuck on the side of the road and the 1st accused tried unsuccessfully to move it and this made him call

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- a* the 2nd accused to help and the 2nd accused in turn asked Walfred to help. The pick-up was then, with the help of the 2nd accused and Walfred, moved and parked by the side of the road. The 2nd accused then pushed the motorcycle down the ravine after being told to do so by the 1st accused. It was after this that Walfred asked the two accused to go home but the 1st
- b* accused reacted and said: “Ini bukan kes kechil, alang, alang”. The words alleged to be uttered were stated by Walfred at the preliminary inquiry as: “Ini kes besar alang alang”. This was to indicate that the two accused were not finished yet with the deceased. They went down the ravine to where the
- c* deceased had fallen. Walfred heard the 1st accused saying: “Pegang pegang” (“hold hold”) and the deceased saying “tolong” (“help”). Walfred did not help because he was afraid and instead, ran away. Walfred almost reached home when the two accused came along and the 2nd accused then said to Walfred that he should not let anyone know about what happened. On the next day, the 1st accused asked Walfred to go to Tamparuli with him but Walfred did not oblige.
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Purchase of Spare Part & Paint

- On the next day, that is 22 February 1994, the 1st accused, according to Limban bin Kiring, drove the pick-up to the workshop where he worked and he welded the bumper of the pick-up. Another witness testified that sometime
- e* in February 1994, someone drove the pick-up to his shop and purchased from him a tin of paint and a front grill.

Discovery of Body and Motorcycle

- f* The body of the deceased and the motorcycle, among other items were on 22 February 1994 at about 1 p.m., discovered by an eleven year old boy called Alor bin Konsiau who called Loutin bin Sorigi. Loutin bin Sorigi, after confirming the presence of the body of the deceased, in turn reported to lance corporal Jaibin bin Sadie (“Jaibin”) who was at that time in charge of the Tenghilan police pondok. Before going to the scene, Jaibin called the Tamparuli police
- g* station to inform them of the discovery of the body.

Recovery of Body Motorcycle & Other Items, Information, Arrest and Seizure

- h* Jaibin was the first policeman on the scene and he saw the body of the deceased, the motorcycle and various items in a ravine. Policemen from the Tamparuli police station, headed by Sub-inspector Tasman Sukiman (“Tasman”) converged on the scene where photographs were taken, sketch drawn and various articles were recovered. The body and the motorcycle were then removed from the ravine and taken to the Tamparuli police station. The body
- i* was taken by Jemrin bin Majid to the Queen Elizabeth Hospital, Kota Kinabalu, for a post-mortem which was conducted on 23 February 1994, by Dr. Samuel

Kumar (“the doctor”) in the presence of Tasman and the body was identified by Chau Nyet Wuih as that of his brother-in-law called Liew Kim Loi @ Meehon. a

Information was on 23 February 1994, received by Jaibin that the two accused and Walfred were involved and this information was conveyed to the OCPD ASP Sidin Abdul Karim who gave instruction to Tasman to have the two accused and Walfred arrested and this was done on the same day. The pick-up was also seized. The pick-up, the motorcycle and the various items recovered were sent to the chemist for examination and analysis. b

Expert Evidence c

The doctor testified that the deceased suffered the following injuries, viz.:

- (1) Abrasions of the right hand, the back (31cm x 21cm), the abdomen (30cm x 20cm) and the right thigh (25cm x 15cm); d
- (2) Lacerated wounds of the right knee (5cm x 1.5cm) and of the left knee (10cm x 10cm);
- (3) Haematoma of scrotum;
- (4) Swelling and decomposed face; and e
- (5) Fractures, anteriorly, of the sternum below the level of the 3rd rib; of the 4th left rib and of the cervical spine (C7).

The doctor testified that the cause of death is the fracture of the said cervical spine and that death was instantaneous. He said that the pick-up could cause a fracture of the cervical spine. When cross-examined he said the fracture could also be caused by the deceased falling and hitting his head first on the ground. f

The other expert who testified was the chemist who took various specimens from both vehicles and he came to the conclusion that the front nearside of the pick-up had come into contact with the rear of the motorcycle and that the front off-side of the pick-up had come into forceful contact with the right side of the motorcycle, both impact of which occurred at different times. g

D. Conclusions h

I have no doubt that on the late night of 21 February 1994, the pick-up driven by the 1st accused, with the 2nd accused and Walfred as passengers, did come into contact with the motorcycle that was ridden by the deceased. Though the 1st accused, 2nd accused and Walfred did have a lot of drink they were not inebriated as not to be able to perceive what was going on or, in the case of the 1st accused, as not to be able to drive the pick-up though it can be expected that the drink would have impaired their judgment. Therefore, that i

- a* Walfred and the other witnesses that I have adverted to should give contradictory accounts of what happened in the canteen is to be expected. What is clear is that the 1st accused was not able to pay his losses to the deceased which brought about the remark by the deceased against the 1st accused that the 1st accused should not be the banker if he does not have the money. It can be inferred that this remark must have irked the 1st accused because, instead of going home after the card game ended, the 1st accused drove to a road junction to wait for the deceased. Again, the evidence is clear that when the pick-up was being driven there by the 1st accused, the 2nd accused was seated in the cabin beside the 1st accused while Walfred was seated at the back of the pick-up. When the motorcycle reached the junction where the 1st accused and party were waiting, the two accused argued with the deceased. If Walfred's recollection is faulty, surely the confirmation provided by the school teacher Irma that there was an argument that night at that place would put to rest any doubt that one may have as regards this argument. The school teacher also supported the evidence of Walfred that the pick-up followed the motorcycle immediately after the motorcycle left. That the pick-up stopped at the junction, waited for the deceased to arrive in the motorcycle and thereafter leaving soon after the motorcycle had left after the argument, leaves me in no doubt that the pick-up was in fact chasing the motorcycle and this, though immaterial, must have come about because the 1st accused then already angered by the said remark at the canteen was challenged by the deceased to meet him the next day before the deceased left in the motorcycle. The 1st accused had in fact said that he is going to chase the deceased. There was no contradiction at all as regards the evidence of Walfred that the pick-up caught up with the motorcycle and thereafter there were exchanges of honks. The pick-up came into contact with the motorcycle. The expert evidence confirmed the contact between these two vehicles. There is nothing, at least not at this stage, to suggest that the contact was accidental. That the pick-up was deliberately driven by the 1st accused to ram the motorcycle was borne out by the fact that though the 1st accused stopped the pick-up subsequent to the initial contact between the pick-up and the motorcycle, he again used the pick-up, that time, to push the motorcycle further and further forward. Such conduct exhibited the anger of the 1st accused which he at first directed at the motorcycle but later at the deceased by turning the pick-up round and driving it straight against the deceased who was by then sitting on the road side after falling from the motorcycle as a result of it being rammed by the pick-up. The pick-up, driven by the 1st accused, ran over the deceased after the 1st accused had shouted to the 2nd accused to get out of the way. I will pause here to advert to the submission of Mr. Ansari Abdullah learned Counsel for the 1st accused, that the evidence of Walfred are not to be believed because of the contradictions in his evidence, some of which I have already mentioned, *supra*. The crucial parts of the evidence of Walfred are well supported by the evidence of other witnesses, like the berating of the 1st accused by the deceased at the canteen, the waiting by the 1st accused

for the motorcycle and the ensuing argument at the junction, all of which I have already mentioned. The fact of the collision between the two vehicles are also borne out by the testimony of the expert who had examined the two vehicles and the related specimens. Tasman who drew a sketch of the scene also supplied the necessary evidence to support Walfred's evidence that the motorcycle was knocked down and thereafter pushed away. Walfred's evidence up to that stage is on the whole very reliable. As for the running over of the deceased, Walfred said that it was only once but Mr. Zahir Hussein Ahmad Shah, learned Deputy Public Prosecutor in his opening statement had said that, and therefore had sought to prove, that the pick-up ran over the deceased several times. Walfred's evidence did not bear that out. This brings me to the question of the cause of the fracture of the C7 cervical spine which, according to the doctor, brought about the instantaneous death of the deceased. Walfred did not provide enough detail as to the part of the body of the deceased that the pick-up ran over as to allow a conclusion that the pick-up caused a fracture of the C7 cervical spine. But then Walfred's evidence was that the deceased was able to avoid the pick-up when it made a second run at him by rolling away which does not bear out the fact that the pick-up had caused the fracture because in such an event, the deceased would not have been able to roll to avoid the pick-up as, according to the doctor, death was instantaneous. Could the said fracture that led to the death had been caused by the deceased's head-long dive into the ravine? The doctor had testified that such a dive could cause the fracture but here again the evidence did not bear that out because, after the dive, assuming for the purpose that it was head-long, the deceased was heard by Walfred to be asking for help which means he was not dead yet and thus the dive could not have caused the fracture. But the deceased was found dead that next day. Could it then be irresistibly inferred that it must have been either the accused or both of them who had caused the death of the deceased? The learned Deputy referred to the evidence of Walfred that the 1st accused had, before going down the ravine with the 2nd accused, said: "Ini bukan kes kecil, alang alang" which Walfred understood to mean the 1st accused still wanted to go after the deceased and that afterwards he heard the 1st accused saying "pegang, pegang" ("hold, hold") and the deceased calling for help. Mr. Ansari pointed out that at the preliminary inquiry, Walfred testified the words uttered were "Ini kes besar, alang alang". It is also to be noted that there was no mention at the preliminary inquiry that the 1st accused had said "pegang, pegang" or that the deceased had shouted for help. The learned Deputy did not direct his address on the points but he submitted that the deceased must have been "hit by a powerful blunt object wielded by the accused persons whilst in the ravine". The first point to be borne in mind is that the learned Deputy in his opening statement implied that the death was caused by the pick-up running over the deceased several times. This appears to be the case for the prosecution when the learned Deputy examined the doctor and stopped after the doctor had testified that the pick-up could have caused all the injuries

- a* suffered by the deceased, including the fracture. In view of all that, I must be skeptical about the evidence of Walfred regarding what the 1st accused was alleged to have said before and after going down the ravine and regarding what he heard about the deceased shouting for help. The second point is that there is absolutely no evidence what blunt object had been used against the
- b* deceased and by which accused. In any event, as I have said earlier, it is not the prosecution case that the fracture was caused by anything else other than the pick-up running over the deceased. Since the evidence shows that the deceased was still alive after the pick-up had run over him, the prosecution had therefore failed to establish this ingredient. Because there was no such
- c* testimony at the preliminary inquiry, what Walfred said at this hearing about hearing the deceased asking for help could be a faulty recollection on the part of Walfred. Therefore, it was possible that the deceased died as a result of the head-long dive into the ravine and since it is not the prosecution case that the death was the result of the two accused driving the deceased into the
- d* ravine, the two accused cannot be held responsible for the death of the deceased as a result of the head-long dive (see *Ratanlal & Dhirajlal's Law of Crimes*, 23rd Edn., pp. 1041-1042).

- However, though it could not be proved that the death of deceased was the result of the act of any of accused the evidence establish that the 1st accused
- e* by driving the pick-up in the manner and under the circumstances which I have referred to, *supra*, as to ram the motorcycle and to run it over the body of the deceased, had the intention to cause the death of the deceased or knew that the death of the deceased would result. This is so notwithstanding the drinking binge that he had hitherto indulged because I am of the view that
- f* the inebriation was not of a level that prevented his presence of mind in handling the vehicle, in pursuing the deceased and in ramming and pushing the motorcycle with the pick-up and also in running the pick-up over the deceased. The 1st accused's attempt to quickly repair the damage to the pick-up lent weight, though unnecessary, to the prosecution case that there was a criminal intent. This means that if the evidence is unrebutted the 1st accused
- g* could be convicted of two offenses of attempted murder under s. 307 of the Penal Code. I will now come to the position of the 2nd accused as regards whether what the 1st accused did, that is the ramming of the motorcycle or the running of the pick-up over the body of the deceased was in pursuance of a pre-arranged plan of the two accused.
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- The 2nd accused is the elder brother of the 1st accused. He was in the pick-up by chance after the card game ended in the canteen. There is no evidence that he had discussed with the 1st accused or had conversation with the 1st accused about going to the junction to wait for the deceased. Though after
- i* the deceased left in the motorcycle after saying he would meet them at the shop the next day, the 1st accused openly said he would chase after the deceased and the 2nd accused then got into the pick-up with the 1st accused,

it can only be inferred that the 2nd accused had agreed to the plan of the 1st accused to chase the deceased. The 2nd accused had agreed to that by getting into the pick-up. However there is no evidence that there was any plan to ram the motorcycle. His mere presence in the pick-up cannot be construed to mean that he had agreed to ramming the motorcycle because it could very well be that he was in a moving vehicle and could not get out even if he disagreed with the action of the 1st accused of ramming the motorcycle. As for the subsequent event of running the pick-up over the deceased, he had by then already alighted from the pick-up and there is also here no evidence that there was a prearranged plan to run the pick-up over the deceased. In fact he was only aware that the 1st accused wanted to run the pick-up over the deceased after he was told to step aside by the 1st accused. I agree with the submission of Ms Patricia Hiew, learned Counsel for the 2nd accused, that common intention had not been established.

The two accused are therefore discharged and acquitted of the charge of murder under s. 302 of the Penal Code. In the case of the 1st accused I rule that a case had been made out against him for attempted murder which if unrebutted would warrant his conviction on the two charges which I shall set out hereafter. Accordingly, I call upon the 1st accused to answer the following charges, viz.:

First Charge

That you Edmund Jammy Ngali on or about 21 February 1994 did an act, ramming a motorcycle, numbered SA4203L ridden by Liew Kim Loi @ Meehon with a pick-up, numbered ST2364B, at KM27, Kota Belud/Tuaran Road, Kg. Tinuhan, Tenghilan, with such intention or knowledge and under such circumstances that if by that act you had caused the death of Liew Kim Loi @ Meehon, you would have been guilty of murder and that you have thereby caused hurt to the said Liew Kim Loi @ Meehon by the said act and thereby committed an offence punishable under s. 307 of the Penal Code.

Second Charge

That you Edmund Jammy Ngali on or about 21 February 1994 did an act, running a pick-up, numbered ST2364B, over the body of Liew Kim Loi @ Meehon, at the KM 27, Kota Belud/Tuaran Road, Kg. Tinuhan, Tenghilan, with such intention or knowledge and under such circumstances, that if by that act you had caused the death of Liew Kim Loi @ Meehon, you would have been guilty of murder and that you have thereby caused hurt to the said Liew Kim Loi @ Meehon by the said act and thereby committed an offence punishable under s. 307 of the Penal Code.